IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

IN THE MATTER OF:
TAMARA R. PERRYMAN, and
MARIO T. PERRYMAN

Case No. 13-22499

DEBTOR.

TAMARA R. PERRYMAN, and
MARIO T. PERRYMAN

Adversary Proc. No.

Plaintiff,

vs.

SEAWAY BANK AND TRUST COMPANY

Defendant.

COMPLAINT TO AVOID SECOND MORTGAGE OF SEAWAY BANK AND TRUST COMPANY

NOW COMES the Plaintiffs, Tamara R. Perryman and Mario T. Perryman (Plaintiffs herein), by and through their attorney, Richard A. Check, respectfully submit this Complaint to Avoid the second mortgage lien of Defendant, Seaway Bank and Trust Company (Defendant herein), as it is an unsecured claim and impairs Debtors' property located at 1300 N. 40th St., Milwaukee, WI 53208. In support, Plaintiffs respectfully represent to the Court as follows:

1. Plaintiffs are the Debtors in the above captioned Chapter 13 bankruptcy proceeding having filed under Chapter 13 on March 6, 2013.
2. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. 1471. This is a core proceeding under 28 U.S.C. 157(b)(2)(K).
3. Defendant holds a second mortgage on Plaintiffs' property located at 1300 N. 40th St., Milwaukee, WI 53208.
4. Plaintiffs bring this adversary pursuant to 11 U.S.C Sec 506(a) and 1322(b)(2), to avoid only the mortgage lien upon homestead property that has no value attach said lien.
5. At the time of filing, Plaintiffs valued the property at a fair market value of $45,000 which is indicated by Schedule A of the Plaintiff's bankruptcy petition. No objection has been received as to the value listed on Schedule A. Actual value is indicated by an appraisal

Prepared By: Attorney Richard A. Check
757 N. Broadway, Ste. 401
Milwaukee, WI 53202
Phone: 414.223.0000
Facsimile: 414.223.3245
wisoffice@aol.com

completed on February 29, 2012, and incorporated herein in the amount of $45,000 (See Exhibit A and B).

6. Plaintiffs' property, at time of filing, had the following prior mortgage lien with Wisconsin Housing and Economic Development Authority for $96,014.38 (see Exhibit C).
7. Pursuant to 11 U.S. C. Sec 506(a), "An allowed claim of a creditor secured by a lien on property in which the estate has an interest… is a secured claim to the extent of the value of such creditor's interest in the estate interest in such property, … and is an unsecured claim to the extent that the value of such creditor's interest… is less than the amount of such allowed claim."
8. The Defendant's mortgage, which was in the amount of $13,797 at time of filing (see Exhibit D) does not attach to any equity in the Plaintiff's property and under 11 U.S. C. Sec 506(a) and is wholly unsecured, and as such can be avoided under 11 U.S. C. Sec 1322(b)(2).
9. The anti-modification protection afforded by 11 U.S.C. 1322(b)(2) applies only when the creditor's claim is at least partially secured. Here, the Defendant's claim is wholly unsecured.
10. The total of the Second mortgage exceeds the value of Debtors' interest in the property and therefore, the mortgage lien of Defendant should be avoided to the full extent of the lien, including any interest.

WHEREFORE, pursuant to 11 U.S.C. Sec 506 and 1322, the Plaintiffs, by and through their attorney, respectfully request this Court enter and Order Avoiding the mortgage lien of Defendant against the Plaintiff's property.

Dated this the 23rd day of April ,2013

S:// Richard A. Check
Richard A. Check #10122-04
757 N. Broadway, Ste. 401
Milwaukee, WI 53202

Prepared By: Attorney Richard A. Check
757 N. Broadway, Ste. 401
Milwaukee, WI 53202
Phone: 414.223.0000
Facsimile: 414.223.3245
wisoffice@aol.com